

**BOARD OF APPEALS CASE NO. 5190**

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**BEFORE THE**

**APPLICANT: Timothy J. Martin**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to allow a detached garage  
within the required front yard setback;  
404 Carrollton Court, Forest Hill**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 10/24/01 & 10/31/01**

**HEARING DATE: December 19, 2001**

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**Record: 10/25/01 & 11/2/01**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicants, Timothy J. Martin (and Anthony DelGatti, DelGatti Contracting), are requesting a variance, pursuant to Section 267-26C(4) of the Harford County Code, to allow a detached garage within the required front yard in an R2 District.

The subject parcel is located at 404 Carrollton Court, Forest Hill, Maryland 21050, in the Third Election District, and is more particularly identified on Tax Map 41, Grid 2A, Parcel 649, Lot 2, in the subdivision of Colony Park. The parcel contains approximately 0.386 acres.

The Applicant, Timothy J. Martin, appeared and testified that he is the owner of the subject property. He is familiar with the Department of Planning and Zoning Staff Report, and has no changes or corrections to that report. Mr. Martin described his property as an unusually shaped lot, with three road frontages.

The witness stated that he proposes to build a 24 foot by 28 foot detached garage connected to the existing driveway. The materials used to construct the proposed garage will match those used in the construction of the existing dwelling. The garage will be used solely for storage. The side of the proposed garage will encroach into the front yard setback, and will come as close as 10 feet from the south side of the property line.

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Mr. Martin testified that due to the unusual configuration of the property, and the existing grade, there is no other feasible location on the subject property to build a detached garage. If the garage were located closer to the existing home, the grade of the property would cause water to run inside the structure. Finally, Mr. Martin testified that he does not believe that the requested variance would have any adverse impact on adjoining properties. He stated that he has spoken with all of his neighbors regarding the proposed addition, none of whom expressed any concern or disagreement regarding his plans.

The Department of Planning and Zoning recommended approval of the subject's request in its Staff Report, dated December 11, 2001, stating that:

"The Department finds that the subject property is unique. The applicant's property has three road frontages and has a limited building envelope. The request, if approved, would not have an adverse impact on the intent of the code, the neighborhood, or the adjacent roadways."

No witnesses appeared in opposition to the requested variance.

### **CONCLUSION:**

The Applicant, Timothy J. Martin is requesting a variance, pursuant to Section 267-26C(4) of the Harford County Code, to allow a 24 foot by 28 foot detached garage to be located within the front yard setback in an R-2 space district.

Section 267-26C(4) of the Harford County Code provides:

"No accessory use of structure shall be established within the required front yard, except agriculture, signs, fences, walls, or parking area and projections or garages as specified in Section 267-23C, Exceptions and modifications to minimum yard requirements."

Section 267-23(C) of the Harford County Code provides for limited exceptions and modifications to minimum yard requirements, however there is no provision in that Code Section which allows for a detached garage to be constructed within the minimum front yard setback.

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The Harford County Code permits the granting of variances, stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Maryland Court of Special Appeals set forth a two-prong test for determining whether a variance should be granted in the case of Cromwell v. Ward, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique only if there is a finding that a peculiar characteristic or unusual circumstance, relating only to the subject property, causes the zoning ordinance to impact more severely on that property than on surrounding properties. Cromwell, supra, at 721. If the subject property is found to be unique, the hearing examiner may proceed to the second prong of the test. The second prong involves a determination as to whether literal enforcement of the zoning ordinance, with regard to the unique property, would result in practical difficulty or unreasonable hardship to the property owner.

The Hearing Examiner finds that the subject property is unique. The property is an unusually shaped lot with three road frontages and a limited building envelope. Thus, the first prong of the Cromwell test has been met.

Having found that the subject property is unique, it must next be determined whether denial of the requested variance would create an unreasonable hardship or practical difficulty for the Applicants. The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty in this case. The unusual configuration of the subject property, the location of the existing drive, and the grade of the property, make the proposed location the only practical place for the construction of a detached garage. If the variance is not granted, the Applicants will be denied property rights commonly enjoyed by others within the Colony Park Subdivision, and Harford County generally.

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Finally, the Hearing Examiner finds that granting of the requested variance will not have any adverse impact on adjacent properties, or materially impair the purpose of this Code or the public interest. The proposed garage will be constructed of materials which match those used in the existing dwelling. In addition, the Applicant discussed the proposed addition with all of his neighbors, none of whom objected to his construction plans.

The Hearing Examiner recommends approval of the Applicant's request, subject to the following conditions:

1. That the Applicant obtain all necessary permits and inspections for the proposed construction.
2. That the garage shall be designed to be compatible with the existing dwelling, and similar materials shall be used in its construction.
3. That the proposed garage shall be used only for Applicant's personal use, and shall not be used for business purposes or for living area.
4. That the Applicant not encroach further into the required setback than the distance requested herein.

Date JANUARY 23, 2002

Rebecca A. Bryant  
Zoning Hearing Examiner